

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SDDS, INC.	:	DETERMINATION
	:	DTA NO. 819310
for Revision of a Determination or for Refund of Sales	:	
and Use Taxes under Articles 28 and 29 of the Tax Law	:	
for the Period June 1, 1996 through November 30, 1996.	:	

Petitioner, SDDS, Inc., c/o Steven F. Horvath, 1731 King Court, Green Brook, New Jersey 08812, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1996 through November 30, 1996.

On April 23, 2003, the Division of Taxation, appearing by Barbara G. Billet, Esq. (John E. Matthews, Esq., of counsel), brought a Motion for Summary Determination pursuant to sections 3000.5 and 3000.9(b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal on the ground that petitioner's claim for refund for the period in question was not timely filed. Petitioner, appearing *pro se*, responded to the motion by a letter in opposition dated May 19, 2003, which date commenced the 90-day period for issuance of this determination. After review of the motion papers, affidavit and documents submitted therewith, and all pleadings and related documents submitted in connection with this matter, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner timely filed its claims for refund for the sales tax quarterly periods ended August 31, 1996 and November 30, 1996 pursuant to Tax Law § 1139.

FINDINGS OF FACT

1. On August 27, 2001, the Division of Taxation (“Division”) received a three-page handwritten letter, dated August 23, 2001, from Steven Horvath, accompanied by two forms ST-100 (New York State and Local Quarterly Sales and Use Tax Return), also dated August 23, 2001, filed on behalf of petitioner SDDS, Inc. The forms ST-100, which are each captioned “Amended Return,” are signed by Mr. Horvath under the title “owner,” and they pertain to the sales and use tax quarterly periods spanning June 1, 1996 through August 31, 1996 and September 1, 1996 through November 30, 1996, respectively. Each form ST-100 lists SDDS, Inc. as a “wholesaler,” lists gross sales for each quarterly period (\$63,043.00 and \$51,094.00, respectively), and thereafter lists “none” as petitioner’s taxable sales, purchases subject to use tax and credits claimed. The portion of the forms where tax liability is to be computed, to wit, lines “1” through “5” of each form, are blank.

2. Mr. Horvath’s letter explains that at the times the foregoing returns were due (i.e., September 20, 1996 and December 20, 1996, respectively), he was personally engaged in a bitter divorce and custody proceeding and had hired an accounting firm to prepare and file the returns. According to Mr. Horvath’s letter, the returns as filed incorrectly listed his business, SDDS, Inc., as a retailer rather than as a wholesaler. When the accounting firm he had hired showed him that tax was due on the returns, he “paid only \$1,000.00 toward each quarter to give something until I could straighten out this mess.”

3. Mr. Horvath’s letter states that the divorce and custody matter was prolonged and financially draining, and he ultimately closed the business operated by SDDS, Inc. The subject forms ST-100 were thereafter filed by Mr. Horvath in an effort to obtain a refund of each of the \$1,000.00 payments made with the original returns for the two quarterly periods in issue,

apparently under the assertion that SDDS, Inc. was a wholesaler, that no sales tax was due on sales by SDDS, Inc., and that the payments in question had been erroneously made.

4. The Division treated petitioner's amended returns as a claim for refund of \$2,000.00. In turn, by a letter dated June 3, 2002, the Division denied petitioner's claim in full on the basis that it had not been timely filed.

CONCLUSIONS OF LAW

A. Tax Law § 1139(a), as in effect during the period in question, provided for a refund or credit of any "tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the [Commissioner of Taxation and Finance] . . . (ii) in the case of a tax, penalty or interest paid by the applicant to the [Commissioner of Taxation and Finance], within three years after the date when such amount was payable under [Article 28 of the Tax Law]."

B. Filing of sales tax returns and payment of tax for sales tax quarterly periods are required within 20 days after the close of the particular quarterly period (Tax Law §§ 1136[b]; 1137[a]). In this instance, returns were due and tax was payable for the two periods in issue, which ended August 31, 1996 and November 30, 1996, respectively, by September 20, 1996 and December 20, 1996, respectively. Unfortunately, petitioner's amended returns, which constituted applications for refund of the \$1,000.00 payments petitioner made for each of such quarterly periods, were not filed until August 23, 2001. This date falls well beyond the three-year period of limitations for filing applications for refunds for such periods and thus petitioner's refund claim was properly rejected by the Division as untimely.

C. The petition of SDDS, Inc. is hereby denied and the Division's June 3, 2002 denial of petitioner's claim for refund is sustained.

DATED: Troy, New York
July 31, 2003

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE